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AUTHOR	Mortimer, Kenneth P.
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ABSTRACT

Collective bargaining with faculty is a relatively recent phenomenon that has spread from only five campuses in 1966 to approximately 388 at the close of the 1974 academic year. This speech begins by citing some facts about the current status and growth of faculty bargaining. The paper then outlines briefly the three major bargaining philosophies that appear to be prevalent (limited bargaining, structural bargaining, and comprehensive bargaining), and goes on to discuss the tenure situation nationally and more specifically as it relates to collective bargaining. The concluding section of the paper dwells on governance and collective bargaining, and specifically the evolving relations between academic or faculty senates and unions on individual campuses. The paper is based on a variety of studies on collective bargaining but also draws heavily on the author's research. (Author/PG)

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"Research Data on Tenure and Governance Under Collective Barga'ning"

A speech delivered at the American Federation of Teachers Conference: Collective Bargaining Faculty Governance and Tenure

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By

Kenneth P. Mortimer
Associate Professor and Research Associate
Center for the Study of Higher Education
The Pennsylvania State University

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I have been asked to talk with you concerning the status of research on tenure and governance under collective bargaining. I do not come here as a representative of any particular point of view, but rather am in the role of an independent researcher and will attempt to summarize the state of knowledge concerning these two important phenomena. I will attempt to be very careful in attaching "probability statements" to the comments I make.

My remarks will begin by citing some "facts" about the current status and growth of faculty bargaining. The paper then will outline briefly the three major bargaining philosophies that appear to be prevalent and go on to discuss the tenure situation nationally and more specifically as it relates to collective bargaining. The concluding section of the paper dwells on governance and collective bargaining, and specifically the evolving relations between academic or faculty senates and unions on individual campuses.

The paper is based on a variety of studies on collective bargaining but draws quite heavily on studies being supported by the Carnegie Corporation and performed by James Begin in New Jersey, Walter Gershenfeld and myself in Pennsylvania and Joe Garbarino.

The Numbers Game

Several points about the nature, growth and current status of faculty collective bargaining are relevant for background purposes. First, collective bargaining with faculty is a relatively recent phenomena which has spread from only five campuses in 1966 to approximately 338 at the close of the 1974 academic year. Since the development of academic bargaining is so recent, it is difficult to talk about trends and impact on governance with any degree of certainty.

As of June, 1974, there were approximately 259 single and/or multi-campus colleges and universities which had experienced faculty collective bargaining elections. These elections resulted in the certification of 228 bargaining units covering 338 campuses and 32 cases (14%) of no representative victories. (Chronicle, June 10, 1974, p. 24).

Second, collective bargaining has occurred primarily in public, two-year institutions. Two hundred ninety seven (88%) of the 338 campuses with faculty bargaining agents are public and 201 (59%) are two-year campuses. Faculties in private institutions have not adopted collective bargaining with the fervor of their colleagues in the public sector.

Third, preliminary evidence suggests that the growth rate of faculty bargaining leveled off and perhaps even declined during the 1974-75 year. I expect that the 74-75 year will be slow but that the 75-76 year will show a significant spurt in new activity. As you know, collective bargaining is heavily concentrated in states or municipalities with public employee bargaining legislation. Approximately 82% (278) of the unionized campuses are located in 9 states. New York, Michigan, New Jersey, Pennsylvania, Washington, Illinois, Minnesota, Wisconsin, and Massachusetts. Several of these states had approached the saturation point for bargaining activity in the public sector by 1973. In New York, for example, 95% of the states' public institutions had already been organized. The corresponding figure for Michigan was 76%, for New Jersey 92%, and for Pennsylvania 69% (Begin, 1974, p. 79). It is not surprising then that there was a slow-down during the 1973-74 year. The temporary nature of this trend, however, is witnessed by the recent incidence of legislative activity in the area of public employee relations in 27 of the 30 states which do not currently have enabling legislation.

There can be little doubt that if and when the necessary legislation takes effect in such states as Florida, California, Wisconsin, Colorado, Washington, and Illinois there will be rapid expansion of the number of unionized campuses. It is also possible that the federal government will extend the NLRA to public employees and this will lead to rapid growth of faculty bargaining in states which do not have enabling legislation.

Bargaining Philosophies

There is a great deal of variability in the contracts and in subjects being negotiated at the over 200 institutions with faculty bargaining units. This variability can be usefully classified into three major bargaining philosophies or categories of contract content (Bucklew, 1974).

The first type is the limited bargaining philosophy. In this particular situation, the collective bargaining contract is basically limited to employment issues such as wages, fringe benefits, leaves, and working conditions. In this type of contract there tends to be little or no contractual reference to governance matters. The prime examples of such contracts are those in effect at Central Michigan University and Rutgers University.

The second major type is called structural bargaining. It differs from the first in that the scope of issues treated in the contract is broader. Under structural bargaining, the issue may be treated in the contract but in structural terms only. There would be no reference to controlling policies or the criteria to be used in decision making. For example, the contract may specify the calendar whereby tenure decisions have to be made but include no reference to tenure policies or the criteria to be used in arriving at tenure decisions. In this type of contract, workload provisions may appear but be in such general language as "workload shall at all times be reasonable."

The third type of bargaining philosophy is called comprehensive bargaining. In comprehensive bargaining, the scope of issues treated in the contract is broad, and they are handled in both procedural and policy terms. These contracts may incorporate such documents as faculty handbooks, board regulations, and a variety of other institutional documents into the contract, and thereby make them binding. The more noted contracts of this nature are at the Pennsylvania State Colleges, and several of the Massachusetts State Colleges.

I hope we are able to keep these three major bargaining philosophies in mind as we discuss tenure and governance under collective bargaining.

Tenure

The Keast Report has defined tenure as an arrangement under which academic (faculty) appointments in an institution of higher education are continued until retirement for age or physical disability, subject to dismissal for adequate cause or unavoidable termination on account of financial exigency or change of institutional program. A survey conducted for the Keast Commission in April, 1972, showed that tenure plans were in effect in 100% of all public and private universities and public four-year colleges; in 94% of the private colleges; and in more than two-thirds of the nations' two-year colleges. An estimated 94% of all faculty members in American universities and colleges are serving in institutions that confer tenure. 94% of the institutions that responded to that survey placed no limits or tenure quotas. 87% of these institutions have some form of appeal system for non-reappointment cases, although it is probably that most of these appeal systems end at the presidential level (Commission on Academic Tenure, 1973).

Reviews of tenure in collective bargaining contracts have been performed

by at least two separate studies. A 1972 survey of 91 contracts conducted under the auspices of the National Center for the Study of Collective Bargaining in Higher Education revealed that approximately 50% of those contracts made no mention of tenure and/or promotion. On the other hand, 30% of these contracts had specific procedures as to how such tenure reviews were to be conducted (Chandler and Chiang, 1973, p. 64).

Harold Goodwin and John Andes, at West Virginia University, have conducted analyses of contract content for the years 1971, 72, and 1973. The percentage of contracts in which tenure appears has gone from 50% in 1971 to 40% in 1972 and up to 49% in 1973 (1973, p. 111). These data are very difficult to interpret, because although tenure may not be mentioned in a contract, it may well be that institutional policy associates rank with tenure. In this case, tenure would be mentioned by inference -- that is promotion to associate professor would carry tenure with it.

There are, of course, other reasons why tenure may not appear in contracts. In New Jersey and New York, for example, tenure in public institutions is a matter of state law. It is considered by some to be superfluous to mention tenure in contracts when this is the case.

In order to get a more realistic appraisal of the incidence and treatment which tenure receives in collective bargaining agreements, we analyzed 31 contracts in four-year institutions for this paper. (There were only about 45 four-year contracts available in the Fall of 1974, according to the National Center for the Study of Collective Bargaining in Higher Education. We, therefore, feel that 30 is a "reasonable" picture of the national scene at this time.)

Of the 31 agreements, 24 (80%) make some reference to tenure, usually

either in the form of an original definition (11 contracts) or indirectly by reference to past practices (8 contracts). Four of the contracts which have no mention of tenure are in New York and New Jersey where state laws are in effect. It is clear that in such institutions as the City University, the State University of New York, and Rutgers tenure decisions are grievable. It would not be accurate to classify these institutions as having contracts that have no protection on tenure.

In one institution, Central Michigan University, the only mention of tenure is the calendar necessary for reaching tenure decisions. The University of Delaware contract has no reference to tenure whatsoever.

Thirteen of the 24 agreements which refer to tenure, specify the process whereby tenure decisions are reached. Ten of the 24 agreements specify the categories of evidence to be used in arriving at the tenure decision.

In our investigation we wanted to be able to respond to the concerns of those who fear that under collective bargaining tenure becomes a matter of job security rather than protection for the exercise of academic freedom. In 17 of the 24 agreements with tenure, there was an academic freedom clause. In only four cases, however, was this clause directly related to tenure. One can assume that in these cases there was considerable discussion at the table about tenure and academic freedom. To the extent that this was not the case at the remaining 13 institutions, the fears of some that collective bargaining will lead to the separation of academic freedom from the tenure rationale may be justified.

We were interested in the extent to which collective bargaining applies binding arbitration to tenure decisions. Thirteen of the 24 contracts with references to tenure also contain provisions for binding arbitration of

grievances; but binding arbitration applies to tenure matters in only 8 of these 13 contracts. In 4 of the contracts, the arbitrator's judgment specifically is limited to procedural matters. (One would have to add the State University and the City University of New York to this figure.) Of the 11 contracts with tenure references that do not have any references to binding arbitration, 8 provide some special appeals procedure for tenure. In 5 cases certain steps of the grievance procedure are used and in 3 cases an administrative procedure, which is not specified in the contract, is used.

There is also concern in the literature that collective bargaining will result in the "dilution" of tenure through its extension to nonfaculty titles. In 13 contracts that we looked at, tenure was extended to librarians. In 5 contracts, part-time faculty received some type of tenure, normally referred to as continuing contracts. In no contracts that we examined did we find any tenure quotas.

Tenure status does provide some protection in periods of retrenchment. Retrenchment provisions were contained in 12 of the contracts we examined and 9 of those contracts gave special status to tenured faculty in times of retrenchment.

These data raise as many questions as they answer. For example, I am not aware of any studies which answer definitively the question of whether tenure is easier or harder to get under systems of collective bargaining. From the studies of grievance procedures in SUNY and CUNY which now exist, it is clear that promotion and tenure decisions are the single greatest cause of grievances.

Governance and Collective Bargaining

To the extent that collective bargaining agreements go beyond strictly

wages and fringe benefits and faculty perquisites, they enter into the realm of governance. One of the basic reasons why governance is such a volatile issue in higher education is because of the tradition which dictates that faculty have a major role in many of what industrial concerns would call management functions, namely planning and staffing. In addition, the basic functions and missions of the institution are in the hands of faculty, whose professional judgment is crucial to their effectiveness.

Governance in collective bargaining contracts takes many forms. Approximately 25% of the contracts in effect at present in higher education have some provision for the formation of joint faculty-administrative committees to handle a variety of issues. A typical clause would read as follows: "The presently constituted organizations of the university (e.g., the university senate, faculty councils, departmental personnel and budget committees, etc.) or any other or similar body composed in whole or in part of the faculty, shall continue to function at the university provided that the action thereof may not directly or indirectly repeal, rescind or otherwise modify the terms and conditions of this agreement."

Another typical clause reads as follows: "The board and the bargaining unit agree on the desirability of involving the faculty in formulation of college policies. This shall be accomplished at every practicable level. A guiding principle in this process is that those affected by a policy, including the community, shall have a proportional voice in the development of that policy. A formal part of this procedure will be the establishment of joint faculty-administration committees."

In conjunction with the incidence of faculty participation in governance clauses, you should be aware that it is quite customary that a management

rights clause appear in contracts. Two separate studies have shown that between 68% to 75% of all contracts have such clauses (Chandler and Chiang, 1973 and Goodwin and Andes, 1973, p. 101). A typical clause would read as follows: "Nothing in the agreement shall derogate from or impair any power, right or duty heretofore possessed by the board or by the administration except where such right, power or duty is specifically limited by this agreement."

To my knowledge, there are no studies which identify the extent of contractual obligation on the part of administrators and faculty for joint involvement in such matters as the selection of department chairmen, deans and presidents. Individual contracts have, of course, guaranteed faculty participation in such matters.

The major debate nationally concerning the impact of collective bargaining on faculty participation in governance centers around the relations which have or will develop between academic senates and unions. I would like to address the remainder of this paper to that relationship.

Most institutions of postsecondary education have some type of organization which is akin to a senate. A recently conducted survey shows that about 40% of the institutions in the country have a campus senate composed of faculty administrators and students (Hodgkinson, 1974, p.8).

In a soon to be published book on faculty unions, Joe Garbarino has classified union-senate relationships as being of three types: cooperation, competition, and co-optation (Garbarino, 1974).

Garbarino concludes that in the opinion of most observers, the most common relationship between unions and senate has been one of cooperation or, at a minimum, coexistence. Garbarino's research shows that cooperation has

been the dominant style at single campus and main branch institutions where administrative structures are simple and unions are essentially guild unions of regular rank faculty. Senates and unions are least cooperative and most competitive in the bargaining units of large complex institutional systems with comprehensive unions and these include a majority of all unionized faculty members. Even in these large systems the relations between local campus senates and local branches of the union are often quite cooperative.

One factor that makes the cooperation work, according to Garbarino, has been a natural division of labor where senates clearly are most active in academic matters and unions are most active in personnel and money matters.

In those institutions where senates tend to be competitive with unions, the union is often perceived as a means for supplanting the current power holders reflected in the traditional senate leadership. This is most likely to occur when a union representing a comprehensive bargaining unit faces a faculty senate which has traditionally excluded non-teaching professionals and others from its membership. When faced with a choice between two different representatives of the faculty, administrations usually show a clear preference for the senate version, thereby bringing latent competition to the surface.

There are a number of institutions which have used cooptative means to resolve the senate-union dilemma. This may be simplistically identified as collegiality by contract. In a cooptative environment the primacy of the union is acknowledged and the distribution of subject matter among the various types of procedural mechanisms is negotiated between representatives of the union and the administration. The authority of the senate then is preserved by specific inclusion in a contract.

Of course, there are many versions of cooptation in which certain aspects of the negotiated agreement involve senate review. For example, the

contract at Temple University establishes certain review rights for Senate committees. The administration cannot change policies without concurrence from the Senate.

There is little empirical evidence about the relationships between senates and unions. The studies being conducted in the state of New Jersey and Pennsylvania are beginning to shed some light on this troublesome question.

In response to a mailed questionnaire, institutions with faculty bargaining in Pennsylvania were asked to indicate the impact collective bargaining has on the senate. 20% indicated that it was too early to tell what the impact was, 30% indicated that the senate has been dissolved since collective bargaining was adopted, 35% said that the senate had been weakened by collective bargaining and 15% indicated the senate had not been weakened by collective bargaining. These are administrative views and may be bias in this regard. In the coming year field trips will be made to each of the institutions in order to provide a more detailed set of data relative to these responses.

Dr. James Begin has been studying the evolution of collective bargaining in New Jersey for the last 3 or 4 years. In his studies he has found no traditional union model in New Jersey. That is, in no case has the union substituted completely for traditional faculty participation mechanisms. His conclusions are important and should be quoted in their entirety.

"The consensus appears to be that the growing formalization of bargaining agent-senate relationships has enhanced the development of cooperative rather than competitive relationships between these decision making forums. Without such relationships, agreeing to refer issues through traditional forums is a somewhat risky business for bargaining agents. This is because there is no

guarantee that a senate which might contain different constituencies. . . will produce results which are acceptable to the bargaining agent" (Begin, 1974, p.12).

According to Begin what seems to be occurring at a number of institutions is that the relationship between the administration and the senate has become more independent. Senates have started to act rather than react often without consulting the administration prior to acting. According to Begin (p.17).

"It is evident that the type of bargaining agent-senate relationship a particular bargaining agent is willing to live with, is directly related to the degree of security it feels it needs against unilateral administrative decision making. An adversary bargaining relationship tends to intensify the need for a bargaining agent to exert greater control over traditional senates."

Is the senate an employer dominated or company union?

I would like to close my remarks by calling your attention to a rather important piece of litigation which is now pending. An N.E.A. affiliate at The Pennsylvania State University has charged the administration with "(1) financing, encouraging and dominating the University Faculty Senate as a company union which will engage in collective bargaining activities as the exclusive voice of the faculty in University-wide affairs. . .," and with "(2) promising economic and other benefits to discourage its employees from exercising freedom of choice in their selection of a collective bargaining representative; and (3) reconstituting the University Faculty Senate as a favored, competing alternative to the employee organization in order to convince employees that economic and other benefits can be obtained from the

University without formal collective bargaining under Act 195."

The case raises some very important issues. It is clear, in my view, that a faculty senate is a labor organization as defined in section 2 (5) of the National Labor Relations Act. Under that act the term labor organization means "any organization of any kind or any agency or employee representation committee or plan in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work (Kahn, 1973, p. 147)." It is my understanding that in the State University of New York unit determination hearing the senate was ruled to be an employee organization.

The real issue is whether or not a senate gets unfair assistance from the administration and whether or not it is employer dominated.

It is typical that an academic senate would receive substantial financial support from the administration. For example, the budget of the Academic Senate at The Pennsylvania State University is $73,000 a year. The Pennsylvania Labor Relations Board will have to answer the very hard question as to whether this financial support constitutes unfair assistance.

The second major issue is that most senates have administrators as members. Does membership in the senate and on senate committees constitute evidence of employer domination?

Labor scholars have long argued that senates were labor organizations and that the only thing needed to be tested was the last two issues. The appropriate test is for a union to file an unfair labor practice charge against the administration on these grounds. The case is increasingly important in that it may force more faculty senates to constitute themselves

as unions and stand for elections. Another alternative would be for a board to rule that those matters which are within the scope of negotiations of the prevailing statute must be treated through a union -- e.g., that past practices are in effect illegal when an act is passed and matters with which Senates have traditionally dealt are within the scope of bargaining.

It is clear that the next year or so will result in some crucial decision relative to the future of union -- senate relations. It is an exciting time to be a student of higher education and collective bargaining.

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